

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3608 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KHODIDAS KHIMJIBHAI

Versus

COMPETENET AUTHORUTY AND DEPUTY COLLECTOR

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Appearance:

MR PM BHATT for Petitioners

Mr. T.H.Sompura, ASSTT. GOVERNMENT PLEADER for the Respondents.

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CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 09/09/98

ORAL JUDGEMENT

By means of this petition, the petitioner has sought for quashing the orders dated 30th August, 1983 passed by the Competent Authority and Deputy Collector, Urban Land Ceiling, Bhavnagar and the order dated 28.11.85 of the Additional Special Secretary (Appeals), Revenue Department, Government of Gujarat, Ahmedabad. The petitioner declared his land admeasuring

20942 sq.mtrs. as excess land under the provisions of Urban Land (Ceiling and Regulation) Act, 1976. The petitioner moved an application under Section 21 of the Act for a housing scheme for weaker sections to the effect that he may be permitted to utilise excess land for construction of dwelling units for weaker sections of the society. The said application was rejected by the Competent Authority and Deputy Collector, Urban Land Ceiling, Bhavnagar by an order dated 30.6.1980. In the appeal, the case was remanded again to the Competent Authority and the Competent Authority and Deputy Collector, Urban Land Ceiling, Bhavnagar dismissed the application of the petitioner by an order dated 30.8.1983 on the ground that as different departments have made a demand of the land on which the petitioner has put a scheme for the scheme for the public purpose.

2. Being aggrieved by the said order, the petitioner filed an appeal before the Additional Urban Land Tribunal, Ahmedabad which by its order dated 28.11.85 dismissed the same on the ground that the land was required specifically by Gujarat Slum Clearance Board, as the said Board had not been given any land so far in Bhavnagar. It was also stated that Post and Telephone department also required the said land. The finding of the competent Authority was that Gujarat Slum Clearance Board will be allotted the land for the construction of dwelling units for weaker sections of the society. Hence, the claim of the said Board is in consonance with the spirit of the provisions of the Act as provided under Section 21(1) of the Act.

3. The learned counsel for the petitioner has produced a copy of Government letter no. ULC-2187-456-V.1 dated 28th May, 1987 whereby instructions had been reviewed and it was decided that no reference will be made to various public bodies and agencies for ascertaining their requirement in respect of the entire land shown in the scheme of the application under Section 21 of the Act, but the case will be disposed of by following other existing principles and instructions in the matter.

Initially, I was under an impression that the scheme proposed under Section 21 is nothing but is a benefit given to the land holders, but after going through the relevant provisions of section 21, Schedule 1A, under rule 11A, I have come to the conclusion that the scheme has been framed actually to give benefit to the weaker sections of the society and in case of any violation of the terms and conditions, and if it comes to

the notice of the specific authority, the scheme can be revoked and/or cancelled and the land can be declared as excess land under the Act.

4. Heard the learned counsel for the parties. The learned counsel for the petitioner has relied on the decision of this court dated 25.1.94 in the case of Special Civil Application no.5075 of 1987 which was based on a decision of the Division Bench of this Court decided on 2nd July, 1990 in which this Court has held that an application under section 21(1) of the Act cannot be rejected without its examining on merits only on the ground that the land was required by any public body for any public purpose. The learned counsel for the State has inquired from the department concerned as to whether the land is required by any public authority for any public or not. The learned Assistant Government Pleader makes a statement under instructions that at present there is no demand in writing for requisition of the said land by any public body or for public purpose, during the pendency of this petition. Still however, if any public authority or board requires the said land or any part thereof for any public purpose, the said issue can be considered and decided by the Competent Authority after giving an opportunity of hearing to the petitioner.

5. In the facts and circumstances of the case, this petition is allowed and the order dated 30.8.83 passed by the Competent Authority and Deputy Collector, Urban Land Ceiling, Bhavnagar and the order dated 28.11.85 passed by Additional Urban Land Tribunal, Ahmedabad are hereby quashed and set aside. This matter is remanded to the Competent Authority and Deputy Collector, Urban Land Ceiling, Bhavnagar with a direction that it will decide the matter about requirement of the land in question or any part thereof, after examining the requirement of the public authority for the public purpose and after giving an opportunity of hearing to the petitioner, in accordance with law, as early as possible preferably within a period of three months from the production of a certified copy of this judgment.

6. With the aforesaid direction, Rule is made absolute to the foresaid extent with no order as to costs.

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